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Application No.: 10/731,937

Inventor(s): Peter M. M. Van Geert et al.

Filed: 12/10/2003

Docket No.: CM1976C

Confirmation No.: 6673

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1) Reply to Examiner's Answer – 3 pgs.

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(FAX-USPTO.doc Revised 11/18/2005)

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/731,937  
Inventor(s) : Peter Maurits Maria Van Geert et al.  
Filed : 12/10/2003  
Art Unit : 1734  
Examiner : Mayes  
Docket No. : CM1976C  
Confirmation No. : 6673  
Customer No. : 27752  
Title : Duplex Holographic Film

**REPLY TO EXAMINER'S ANSWER**

Commissioner for Patents  
VIA FACSIMILE 571/273-8300

This is in reply to the Examiner's Answer, mailed November 13, 2007, to the Appeal Brief filed October 5, 2007, appealing from the Office Action mailed January 8, 2007.

As discussed in the Specification (page 2, lines 14-17 and page 4, lines 7-11) Appellants have discovered a problem associated with making a holographic structure by printing. The problem arises due to unsuspected pin-holes in the aluminum layer, which allow printing ink to bleed-through. (See **BRIEF**, page 2, for a summary of the problem and its solution.)

The claims on Appeal specifically recite the pin-holes.

Appellants continue to take the position that, absent some recognition of the pin-hole problem, there is no suggestion in any combination of the cited art to arrive at the solution to said problem now provided by Appellants' invention. In this regard, the Appellants have cited MPEP 2141.02 and other relevant case law.

In short, Appellants have argued that, in making the rejection, the Examiner has assumed facts not in evidence, i.e., the presence of the pin-holes in the prior art aluminum films.

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In the ANSWER, page 9, last paragraph, the Examiner again asserts that, "... when an aluminum metallic layer is applied by vaporization, *pin-holes are usually present* in the metallic layer. WO 93/08084 teaches providing the aluminum layer by vapor deposition which *obviously results* in an aluminum layer *having pinholes*." [emphasis supplied]

Quite frankly, a review of the text of WO 93/08084 gives no hint of any teaching of the presence of pin-holes in the disclosed aluminum films. See, for example, WO '084 at page 3, lines 11-17, which states:

Next a film 16 of metal (typically aluminium) is deposited over the embossed thermoplastic layer 14, either by vacuum deposition or by sputtering. Then printing is applied to the sheet material over the film 16, and covered by a thin film of varnish, indicated at 17. The opposite surface of the sheet material is coated with a conventional cold seal layer 8.

Accordingly, it is submitted that this key element of the Examiner's position is not supported by the cited WO '084 document and is, in fact, unreported and unknown in any of the cited documents. As the Board is aware, "... obviousness cannot be predicated on what is unknown." *In re Naylor*, 369 F2d 765, 768 (CCPA 1967).

Moreover, and different from what is asserted by the Examiner, the purported combination of WO '084 and US 5,658,968 is discussed at page 7 of the BRIEF in the context of the key problem recognition aspect of this case.

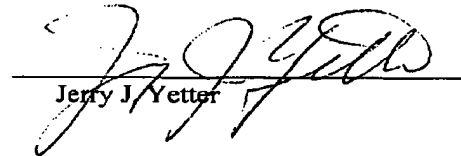
The combination of US 5,200,252 with US 5,658,968 is discussed at page 8 of the BRIEF.

As is clear from the BRIEF, the other cited documents merely list various ingredients which could, perhaps, be selected for use in the claimed invention, once the basic pin-hole problem had been recognized. Yet, as noted, this recognition is not afforded by any one, or any combination, of said documents.

The Board's reversal of Claims 1 and 4 continues to be requested.

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